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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/663,317	09/15/2003	Norman S. Martucci	0153.00095	1325

7590 12/23/2005  
KOHN & ASSOCIATES, PLLC  
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EXAMINER
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MIGGINS, MICHAEL C

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 12/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/663,317

Applicant(s)

MARTUCCI ET AL.

Examiner

Michael C. Miggins

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 September 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 1-13, 22 and 23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>4/19/04</u> .   | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION*****Election/Restrictions***

1. Applicant's election with traverse of group II, claims 14-21 in the reply filed on 9/29/05 is acknowledged. The traversal is on the ground(s) that due to cross-classification, examining both groups of claims does not present a serious burden to the examiner. This is not found persuasive because groups I and II are classified in 428 and 156 respectively, there is no cross-classification between 428 and 156 and thus searching for both groups presents a serious burden to the examiner.

The requirement is still deemed proper and is therefore made FINAL.

2. This application contains claims 1-13 and 22-23 drawn to an invention nonelected with traverse in Paper No. 9/29/05. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

3. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

Art Unit: 1772

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 14-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Claim 14 recites the limitation "said first layer" in line 3. There is insufficient antecedent basis for this limitation in the claim.

7. Claim 15 recites the limitation "said first forming" in line 1. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 14-15, 17 and 19-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Egres, Jr. (US 6016848).

Egres discloses a method of making a hose assembly including the steps of forming a smooth inner fluoropolymer layer (column 6, lines 24-36, column 8, lines 13-24), forming a jacket over the inner fluoropolymer layer while adhering said jacket and said first layer together and corrugating said jacket (column 9,

Art Unit: 1772

line 51 through column 10, line 57), said first forming a smooth layer, depositing at least one braided layer between said inner and said jackets (column 10, lines 6-10), said corrugating step further defined as forming a spiral corrugation and a circular corrugation (column 10, lines 22-65) (applies to instant claims 14-15, 17 and 19-20).

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Egres, Jr. (US 6016848) in view of Hegler (US 3976414).

Egres fails to disclose the forming step further defined as extruding the jacket over the smooth inner fluoropolymer layer.

Hegler discloses the forming step further defined as extruding the jacket over the smooth inner fluoropolymer layer (column 1, line 63 through column 2, line 57) for the purpose of providing improved methods for forming corrugations and lower costs.

Therefore it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided the forming step further defined as extruding the jacket over the smooth inner fluoropolymer layer in the

Art Unit: 1772

method of Egres in order to provide providing improved methods for forming corrugations and lower costs as taught or suggested by Hegler.

12. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Egres, Jr. (US 6016848) in view of Reynolds (US 5653266).

Egres fails to disclose said corrugating step further defined as etching the corrugation on the jacket.

Reynolds discloses said corrugating step further defined as etching the corrugation on the jacket (column 3, lines 20-30) in order to improve adhesion between the outer and inner layers.

Therefore it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided said corrugating step further defined as etching the corrugation on the jacket in the method of Egres in order to improve adhesion as taught or suggested by Reynolds.

13. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Egres, Jr. (US 6016848) in view of Lupke (US 5324557).

Egres fails to disclose wherein said corrugating step includes injection molding the corrugations to the hose assembly.

Lupke discloses wherein said corrugating step includes injection molding the corrugations to the hose assembly (column 3, lines 19-38) for the purpose of providing lighter weight.

Art Unit: 1772

Therefore it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided wherein said corrugating step includes injection molding the corrugations to the hose assembly in the method of Egres in order to provide lighter weight as taught or suggested by Lupke.

### ***Double Patenting***

14. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

15. Claims 14-15, 17 and 19-20 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,641,884 in view of Egres, Jr. (US 6016848).

Art Unit: 1772

Claim 1 of U.S. Patent No. 6,641,884 recites a hose assembly comprising an inner fluoropolymer layer and an outer corrugated polyamide layer.

Claim 1 of U.S. Patent No. 6,641,884 fails to recite a method of making a hose assembly including the steps of forming a smooth inner fluoropolymer layer, forming a jacket over the inner fluoropolymer layer while adhering said jacket and said first layer together and corrugating said jacket, said first forming a smooth layer, depositing at least one braided layer between said inner and said jackets, said corrugating step further defined as forming a spiral corrugation and a circular corrugation.

Egres discloses a method of making a hose assembly including the steps of forming a smooth inner fluoropolymer layer (column 6, lines 24-36, column 8, lines 13-24), forming a jacket over the inner fluoropolymer layer while adhering said jacket and said first layer together and corrugating said jacket (column 9, line 51 through column 10, line 57), said first forming a smooth layer, depositing at least one braided layer between said inner and said jackets (column 10, lines 6-10), said corrugating step further defined as forming a spiral corrugation and a circular corrugation (column 10, lines 22-65) for the purpose of providing a flexible tube exhibiting excellent tensile and flexural strength and dimensional stability (applies to instant claims 14-15, 17 and 19-20).

Therefore it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided a method of making a hose assembly including the steps of forming a smooth inner fluoropolymer layer, forming a jacket over the inner fluoropolymer layer while adhering said jacket and



Art Unit: 1772

said first layer together and corrugating said jacket, said first forming a smooth layer, depositing at least one braided layer between said inner and said jackets, said corrugating step further defined as forming a spiral corrugation and a circular corrugation in the invention recited in claim 1 of U.S. Patent No. 6,641,884 in order to provide a flexible tube exhibiting excellent tensile and flexural strength and dimensional stability as taught or suggested by Egres.

16. Claim 16 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,641,884 in view of Egres, Jr. (US 6016848), as applied to claims 14-15, 17 and 19-20 above, and further in view of Hegler (US 3976414).

Claim 1 of U.S. Patent No. 6,641,884 fails to recite the forming step further defined as extruding the jacket over the smooth inner fluoropolymer layer.

Hegler discloses the forming step further defined as extruding the jacket over the smooth inner fluoropolymer layer (column 1, line 63 through column 2, line 57) for the purpose of providing improved methods for forming corrugations and lower costs.

Therefore it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided the forming step further defined as extruding the jacket over the smooth inner fluoropolymer layer in the invention of claim 1 of U.S. Patent No. 6,641,884 in order to provide providing improved methods for forming corrugations and lower costs as taught or suggested by Hegler.

Art Unit: 1772

17. Claim 18 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,641,884 in view of Egres, Jr. (US 6016848), as applied to claims 14-15, 17 and 19-20 above, and further in view of Reynolds (US 5653266).

Claim 1 of U.S. Patent No. 6,641,884 fails to recite said corrugating step further defined as etching the corrugation on the jacket.

Reynolds discloses said corrugating step further defined as etching the corrugation on the jacket (column 3, lines 20-30) in order to improve adhesion between the outer and inner layers.

Therefore it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided said corrugating step further defined as etching the corrugation on the jacket in the invention of claim 1 of U.S. Patent No. 6,641,884 in order to improve adhesion as taught or suggested by Reynolds.

18. Claim 21 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,641,884 in view of Egres, Jr. (US 6016848), as applied to claims 14-15, 17 and 19-20 above, and further in view of Lupke (US 5324557).

Claim 1 of U.S. Patent No. 6,641,884 fails to recite wherein said corrugating step includes injection molding the corrugations to the hose assembly.

Art Unit: 1772

Lupke discloses wherein said corrugating step includes injection molding the corrugations to the hose assembly (column 3, lines 19-38) for the purpose of providing lighter weight.

Therefore it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided wherein said corrugating step includes injection molding the corrugations to the hose assembly in the invention of claim 1 of U.S. Patent No. 6,641,884 in order to provide lighter weight as taught or suggested by Lupke.

19. Claims 14-15, 17 and 19-20 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-11 of U.S. Patent No. 6,948,528 in view of Egres, Jr. (US 6016848).

Claims 1-11 of U.S. Patent No. 6,948,528 recites a hose assembly comprising an inner fluoropolymer layer and an outer corrugated polyamide layer.

Claims 1-11 of U.S. Patent No. 6,948,528 fails to recite a method of making a hose assembly including the steps of forming a smooth inner fluoropolymer layer, forming a jacket over the inner fluoropolymer layer while adhering said jacket and said first layer together and corrugating said jacket, said first forming a smooth layer, depositing at least one braided layer between said inner and said jackets, said corrugating step further defined as forming a spiral corrugation and a circular corrugation.

Art Unit: 1772

Egres discloses a method of making a hose assembly including the steps of forming a smooth inner fluoropolymer layer (column 6, lines 24-36, column 8, lines 13-24), forming a jacket over the inner fluoropolymer layer while adhering said jacket and said first layer together and corrugating said jacket (column 9, line 51 through column 10, line 57), said first forming a smooth layer, depositing at least one braided layer between said inner and said jackets (column 10, lines 6-10), said corrugating step further defined as forming a spiral corrugation and a circular corrugation (column 10, lines 22-65) for the purpose of providing a flexible tube exhibiting excellent tensile and flexural strength and dimensional stability (applies to instant claims 14-15, 17 and 19-20).

Therefore it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided a method of making a hose assembly including the steps of forming a smooth inner fluoropolymer layer, forming a jacket over the inner fluoropolymer layer while adhering said jacket and said first layer together and corrugating said jacket, said first forming a smooth layer, depositing at least one braided layer between said inner and said jackets, said corrugating step further defined as forming a spiral corrugation and a circular corrugation in the invention recited in claims 1-11 of U.S. Patent No. 6,948,528 in order to provide a flexible tube exhibiting excellent tensile and flexural strength and dimensional stability as taught or suggested by Egres.

20. Claim 16 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-11 of U.S. Patent No.

Art Unit: 1772

6,948,528 in view of Egres, Jr. (US 6016848), as applied to claims 14-15, 17 and 19-20 above, and further in view of Hegler (US 3976414).

Claim 1-11 of U.S. Patent No. 6,948,528 fail to recite the forming step further defined as extruding the jacket over the smooth inner fluoropolymer layer.

Hegler discloses the forming step further defined as extruding the jacket over the smooth inner fluoropolymer layer (column 1, line 63 through column 2, line 57) for the purpose of providing improved methods for forming corrugations and lower costs.

Therefore it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided the forming step further defined as extruding the jacket over the smooth inner fluoropolymer layer in the invention of claims 1-11 of U.S. Patent No. 6,948,528 in order to provide providing improved methods for forming corrugations and lower costs as taught or suggested by Hegler.

21. Claim 18 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-11 of U.S. Patent No. 6,948,528 in view of Egres, Jr. (US 6016848), as applied to claims 14-15, 17 and 19-20 above, and further in view of Reynolds (US 5653266).

Claims 1-11 of U.S. Patent No. 6,948,528 fail to recite said corrugating step further defined as etching the corrugation on the jacket.

Art Unit: 1772

Reynolds discloses said corrugating step further defined as etching the corrugation on the jacket (column 3, lines 20-30) in order to improve adhesion between the outer and inner layers.

Therefore it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided said corrugating step further defined as etching the corrugation on the jacket in the invention of claims 1-11 of U.S. Patent No. 6,948,528 in order to improve adhesion as taught or suggested by Reynolds.

22. Claim 21 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-11 of U.S. Patent No. 6,948,528 in view of Egres, Jr. (US 6016848), as applied to claims 14-15, 17 and 19-20 above, and further in view of Lupke (US 5324557).

Claims 1-11 of U.S. Patent No. 6,948,528 fail to recite wherein said corrugating step includes injection molding the corrugations to the hose assembly.

Lupke discloses wherein said corrugating step includes injection molding the corrugations to the hose assembly (column 3, lines 19-38) for the purpose of providing lighter weight.

Therefore it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided wherein said corrugating step includes injection molding the corrugations to the hose

Art Unit: 1772

assembly in the invention of claims 1-11 of U.S. Patent No. 6,948,528 in order to provide lighter weight as taught or suggested by Lupke.

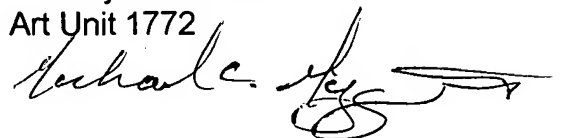
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Miggins whose telephone number is 571-272-1494. The examiner can normally be reached on 1:00-10:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michael C. Miggins  
Primary Examiner  
Art Unit 1772



MCM  
December 12, 2005

